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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/591,981	06/12/2000	Bruce McKendry	0414.63308	3537

24978 7590 07/01/2003

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CHICAGO, IL 60606

EXAMINER

GHAFOORIAN, ROZ

ART UNIT	PAPER NUMBER
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3763

18

DATE MAILED: 07/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

Office Action Summary

Application No.

09/591,981

Applicant(s)

MCKENDRY, BRUCE

Examiner

Roz Ghafoorian

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4-24-2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-8 and 10-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-8 and 10-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claim Rejections - 35 USC § 102

Allowance of claims 6-8 are withdrawn and new rejection applied due to new found art as described below.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 6-8 rejected under 35 U.S.C. 102(b) as being anticipated by US Patent no.4607596 to Whittlestone et al or US Patent No.6257847 to Silver et al.

Whittlestone teaches an air pump with a movable diaphragm in a chamber with one out port, a shaft operatively connected to the diaphragm and a motor or a driving means which oscillates the diaphragm axially by means of the shaft, the motor being coupled to the diaphragm through threaded engagement the translates motor rotation into diaphragm oscillation.

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2. Claims 6-8 rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No.6257847 to Silver et al.

Silver teaches an air pump with a movable diaphragm in a chamber with one out port, a shaft operatively connected to the diaphragm and a motor or a driving means which oscillates the diaphragm axially by means of the shaft, the motor being coupled to the diaphragm though threaded engagement the translates motor rotation into diaphragm oscillation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4607596 to Whittlestone et al, and further in view of US Patent No. 5749850 to Williams et al.

Whittlestone teaches a milk collector unit having manifold assembly with a vacuum path 6 and a pulsating pressure path 9, a collection vessel 19 operatively connected to the vacuum path 21 a cup assembly 8 with a housing having an inlet and outlet a liner 7 extending from the housing inlet to the housing outlet, the liner being secured to the housing to form a space between the housing and the liner which is in communication with the pulsating pressure path, pressure in the pulsating path moving the liner within

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the housing, the manifold further having a hollow boss 10 which extends into the outlet within the liner.

Whittlestone however does not teach a pad or cushion in the cup assembly. Williams teaches a cushion in the cup assembly. (col.7, lines 15-20)

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have added the cushion in the cup assembly of Whittlestone because according to Williams the cushion will provide comfort for the patient. (col.7 lines 15-20)

Response to Arguments

Applicant's arguments filed 4-24-2003 have been fully considered but they are not persuasive.

- a. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., in claim 7, the applicant does not claim a rotating shaft with a threaded engagement which translate motor rotation into diaphragm oscillation) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
- b. Applicant claims Whittlestone does not teach a hollow boss or a liner, however as demonstrated in figure one 1 Whittlestone teaches a hollow boss section surrounding 10 and a liner 7 and 10.

c. The applicant claims Silver does not teach a rotating shaft with a threaded engagement, which translate motor rotation into diaphragm oscillation. However since the applicant has not defined threaded in the specification the examiner has interpreted threaded to mean means to engage. And in Col.2, lines 1-5 silver teaches rotation of the drive shaft rotates the cam, causing the follow to move back and forth as it orbits the shaft. The puller moves with the follower, drawing the diaphragm away form the cap. Hence silver does teach a shaft 50 operatively connected to the diaphragm 70 and a motor, which oscillates the diagrams axially, be means of the shaft, the motor being coupled to the diaphragm through threaded engagement that translated motor rotation into diaphragm oscillation.

Conclusion

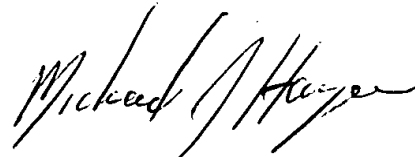
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Ghafoorian whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

RG
June 26, 2003

A handwritten signature in black ink, appearing to read "Michael J. Hayes". The signature is fluid and cursive, with the first and last names being more prominent.

MICHAEL J. HAYES
PRIMARY EXAMINER